

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTSMASSACHUSETTS LABORERS' DISTRICT COUNCIL,  
Plaintiff

C.A. No.

04-12633 RWZ

vs.

AG ASBESTOS, INC.,  
DefendantMAGISTRATE JUDGE Alexander

RECEIPT #   
 AMOUNT \$ 15  
 SUMMONS ISSUED YES  
 LOCAL RULE 4.1   
 WAIVER FORM   
 MCF ISSUED   
 BY DPTY CLK FORM  
 DATE 12/14/04

COMPLAINTNATURE OF ACTION

1. This is an action brought pursuant to §301 of the Labor Management Relations Act ("the Act"), 29 U.S.C. §185 to enforce a labor arbitration award.

JURISDICTION

2. The Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 and §1337.

PARTIES

3. Plaintiff Massachusetts Laborers' District Council ("Union") is a labor organization within the meaning of §301 of the LMRA, 29 U.S.C. §185. The Union is administered at 7 Laborers' Way, Hopkinton, Massachusetts, within this judicial district.

4. Defendant AG Asbestos, Inc. (hereinafter "AG" or "the Employer"), is a Massachusetts corporation with a principal place of business at 255 Erving Avenue, Lawrence, Massachusetts, and is an employer within the meaning of 29 U.S.C. §152(2) and §185.

**GENERAL ALLEGATIONS OF FACT**

5. Plaintiff and Defendant are parties to a collective bargaining agreement that is a contract within the meaning of 29 U.S.C. §185 and that, among other things, provides for final and binding arbitration of disputes arising under the agreement before an Arbitration Board comprised of two Union and two Building Wreckers' Association representatives.

6. On or about February 25, 2004, a letter was sent by certified mail to AG, notifying it of an arbitration hearing scheduled for March 17, 2004, to assess AG for its fringe benefit delinquency, interest, damages and fees. A copy of that letter is attached as Exhibit A.

7. On March 17, 2004 the Joint Grievance Committee heard evidence that AG had been audited and determined to owe \$137,578.51 in delinquent contributions and further, that it had been notified of the hearing but had failed to attend. The Committee issued a decision awarding the Funds the principal amount of \$137,578.51, late payment interest fees of \$35.51, liquidated damages of \$13,757.00 and counsel fees in the amount of \$1,500.00. A copy of that Decision is attached hereto as Exhibit B.

8. By certified letter dated April 20, 2004, AG was mailed a copy of the Decision. A copy of that letter is attached hereto as Exhibit C.

9. To date and without any lawful justification, Defendant has failed and refused to comply with the Award.

10. The Massachusetts Arbitration Act requires that any action to vacate an arbitration award be filed within thirty (30) days of receipt of the award. M.G.L. c. 150 §11.

11. AG failed to file an action to vacate the arbitration award within 30 (30) days of its receipt.

**RELIEF REQUESTED**

WHEREFORE, plaintiff requests that judgment be entered against Defendant:

- a. ordering Defendant to comply with the Arbitration Board's Decision;
- b. ordering Defendant to pay Plaintiff's costs and attorney's fees for bringing this action;
- c. ordering such further and other relief as may be just and proper including, but not limited to, declaring that Defendant is time-barred from asserting any affirmative defenses because the statutory period of thirty (30) days for asserting such defenses has elapsed.

Respectfully submitted,

MASSACHUSETTS LABORERS'  
DISTRICT COUNCIL,

By its attorneys,



---

Anne R. Sills, Esquire  
BBO #546576  
Segal, Roitman & Coleman  
11 Beacon Street  
Suite #500  
Boston, MA 02108  
(617) 742-0208

Dated: December 15, 2004



**O'REILLY, GROSSO & GROSS, P.C.**

ATTORNEYS AT LAW  
1671 WORCESTER ROAD, SUITE 205  
FRAMINGHAM, MA 01701-5400

JOHN D. O'REILLY, III  
JAMES F. GROSSO  
KARL J. GROSS  
STEPHEN L. ROSSETTI, JR.

Fax (508) 620-0055  
(508) 620-7655

February 25, 2004

CERTIFIED MAIL NO. 7000 1670 0006 8731 5779  
RETURN RECEIPT REQUESTED  
AND FIRST CLASS MAIL

Brunilda Rodriguez  
AG Asbestos, Inc.  
255 Erving Avenue  
Lawrence, MA 01841

Dear Ms. Rodriguez:

As you have not responded to my letter of February 6, 2004 on behalf of the Massachusetts Laborers' Benefit Funds, with regard to your non-payment of fringe benefit contributions and late fees, and as I understand that the Union has obtained documentation that you are not reporting contribution hours for individuals who are working on your project, and whose names appear on the certified payrolls for your project, we have scheduled an arbitration hearing under your collective bargaining agreement with the Massachusetts Laborers' District Council for 11:10 a.m. on March 17, 2004.

At this hearing, there will be a claim for an assessment of interest, liquidated damages and counsel fees, as well as a designation of an audit date. You should make every effort to appear at this hearing, as the Committee will proceed to hear the case, whether you appear or not.

Very truly yours,



John D. O'Reilly, III

JDO/plw

cc: Massachusetts Laborers' Benefit Funds  
Massachusetts Laborers' District Council  
Angela Pavone, Laborers' Local 560

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Received by (Please Print Clearly) <input type="text"/> B. Date of Delivery <input type="text" value="2-26-04"/></p> <p>C. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p>BRUNILDA ROGRIGUEZ AG ASBESTOS, INC. 255 ERVING AVENUE LAWRENCE, MA 01841</p>		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Copy from service label)</p>			

2. Article Number (Copy from service label)  
7000 1670 0006 8731 5779

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PS Form 3811, July 1999

Domestic Return Receipt  
LAB. DEL.

102595-00-M-0952



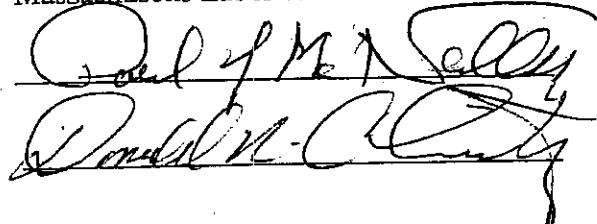
MASSACHUSETTS LABORERS' DISTRICT COUNCIL  
JOINT GRIEVANCE COMMITTEE

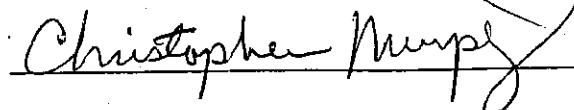
GRIEVANCE COMMITTEE DECISION

Re: A G Asbestos, Inc.

This matter came before the Joint Grievance Committee under the collective bargaining agreement between A G. Asbestos, Inc. and the Massachusetts Laborers' District Council on March 17, 2004. The evidence presented indicated that, on February 26, 2004, A G Asbestos had contacted Attorney O'Reilly, who represents the Massachusetts Laborers' Benefit Funds, indicating that they were awaiting results of an audit, and requested the consideration of a payment plan to be set up between the company and the benefit funds. The audit was completed on March 5, 2004, reflecting an amount due of \$137,578.51. The company did not appear at the scheduled Grievance Committee hearing, notwithstanding both certified and regular mail notice of that hearing. The Committee assesses A G Asbestos, Inc. the principal amount of \$137,578.51, late payment interest fees of \$35.51, together with liquidated damages of \$13,757.00 and counsel fees in the amount of \$1,500.00.

Massachusetts Laborers' Joint Grievance Committee

  
Donald M. O'Reilly

  
Christopher Murphy

E:\Documents\John O'Reilly\MLBF-Delinquencies\AG Asbestos\Arb Decision.doc



**O'REILLY, GROSSO & GROSS, P.C.**

ATTORNEYS AT LAW  
1671 WORCESTER ROAD, SUITE 205  
FRAMINGHAM, MA 01701-5400

JOHN D. O'REILLY, III  
JAMES F. GROSSO  
KARL J. GROSS  
STEPHEN L. ROSSETTI, JR.

(508) 620-0055  
Fax (508) 620-7655

April 20, 2004

CERTIFIED MAIL NO. 7000 1670 0006 8731 6288  
RETURN RECEIPT REQUESTED  
AND FIRST CLASS MAIL

A G Asbestos, Inc.  
255 Erving Avenue  
Lawrence, MA 01841

Dear Sir/Madam:

I am enclosing the Decision of the Massachusetts Laborers' Joint Grievance Committee determining that, pursuant to an audit conducted in March of 2004, you are obligated to pay Massachusetts Laborers' Benefit Funds the principal amount of \$137,578.51, late payment interest fees of \$35.51, liquidated damages of \$13,757.00 and counsel fees of \$1,500.

Kindly contact me immediately to make arrangements for payment. If this matter is not resolved within 30 days of your receipt of this decision, we will be pursuing the matter immediately, without further notice to you, in the United States District Court, wherein we will be seeking the assessment of additional counsel fees and costs. I trust that will be unnecessary.

Please contact me immediately.

Very truly yours,

*John D. O'Reilly, III*  
John D. O'Reilly, III  
*plw*

JDO/plw  
Enclosure

A G Asbestos, Inc.

April 20, 2004

Page 2

cc: Philip Mackay, Collections Agent  
Massachusetts Laborers' Benefit Funds

cc: Paul J. McNally, Business Manager  
Massachusetts Laborers' District Council

E:\Documents\John O'Reilly\MLBF-Delinquencies\AG Asbestos\A G Asbestos Ltr 04-20-04.doc

MASSACHUSETTS LABORERS' DISTRICT COUNCIL  
JOINT GRIEVANCE COMMITTEE

GRIEVANCE COMMITTEE DECISION

Re: A G Asbestos, Inc.

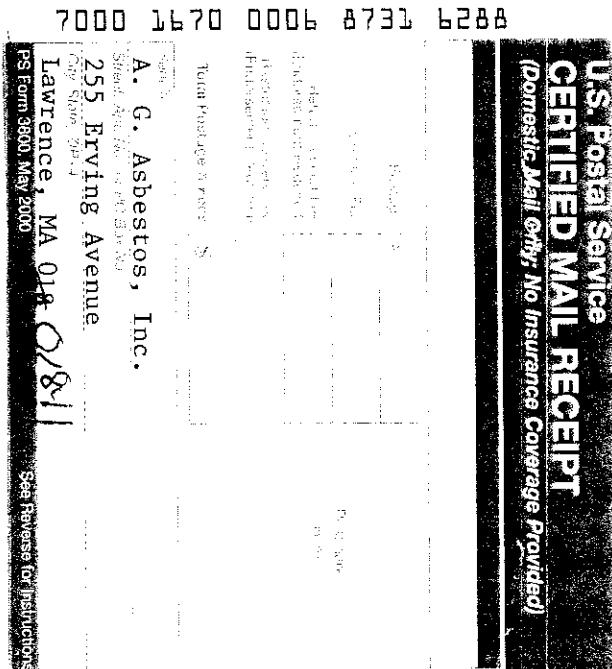
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Massachusetts Laborers' Joint Grievance Committee

John O'Reilly  
Donald M. Cleary

Christopher Murphy

E:\Documents\John O'Reilly\MLBF-Delinquencies\AG Asbestos\Arb Decision.doc

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

AG Asbestos, Inc.  
255 Erving Avenue  
Lawrence, MA 01841

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)	B. Date of Delivery
<i>G. Ouzman</i>	<i>4/21/04</i>
C. Signature	
<i>G. Ouzman</i>	
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No	

3. Service Type
<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes

2. Article Number (Copy from service label)  
7000 1670 0006 8731 6288

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

MASSACHUSETTS LABORERS' DISTRICT COUNCIL

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Anne R. Sills, Esquire  
Segal, Roitman & Coleman  
11 Beacon Street, Suite #500  
Boston, MA 02108

## DEFENDANTS

AG Asbestos, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff  
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

## IV. ORIGIN

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or ReopenedTransferred from  
another district  
(specify) 6 Multidistrict LitigationAppeal to District Judge from  
Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 861	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce/ICC Rates, etc	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety & Health	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 550 Securities/Commodities Exchange	
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Persons	<input type="checkbox"/> 700 Other	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 892 Economic Stabilization Act	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA - 1985ff	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 520 HABEAS CORPUS: General	<input type="checkbox"/> 862 Black Lung - 923	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing, Accommodations	<input type="checkbox"/> 530 Death Penalty	<input type="checkbox"/> 863 DIWC DIWW (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 864 SSD Title XVI	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 865 PS - 405(g)	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 790 Other Labor Litigation	
			<input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
FEDERAL TAX SUITS				
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE  
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

This is a claim to collect unpaid benefit fund contributions, brought pursuant to ERISA, 29 U.S.C. Sec. 1132.

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND:  YES  NOVIII. RELATED CASE(S) (See instructions):  
IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/16/04  
Anne R. Sills

FOR OFFICE USE ONLY

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Massachusetts Laborers' District  
Council v. AG Asbestos, Inc.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

— I 160, 410, 470, 823, REGARDLESS OF NATURE OF SUIT.

X II 195, 360, 400, 440, 441-444, 540, 550, 625, 710, 720, 730,  
740, 750, 791, 820\*, 830\*, 840\*, 850, 870, 872-874, 875, 950.

\*Also complete AO 120 or AO 121  
for patent, trademark or copyright cases

— III 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,  
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,  
380, 385, 450, 891.

— IV 210, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,  
670, 810, 861-865, 870, 871, 875, 900.

— V 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(B)).

N/A

**04**  
HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES  NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403)

YES  NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES  NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284?

YES  NO

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)).

YES  NO

OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)?

YES  NO

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT?

YES  NO

(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE?

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? N/A

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION? YES  NO  N/A OR WESTERN SECTION: YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Anne R. Sills

ADDRESS Segal, Roitman & Coleman, 11 Beacon Street, Suite #500, Boston, MA 02108

TELEPHONE NO. (617) 742-0208

(Category Rev. 3/97)